IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.Rev.Pet.No. 966 of 2000()

CRA.72/1997 of SESSIONS COURT, KASARAGOD DT.13.10.2000
CC.696/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG
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REVN. PETITIONER: APPELLANT/ ACCUSED

KANATHIL SHANTHA, AGED 41 YEARS,
W/O.NARAYANAN, UDAYAGIRI DESOM,
KAYYUR VILLAGE, KOSDURG TALUK,
KASARAGOD DISTRICT.

BY ADV. SRI.DILIP MOHAN
SMT.T.SUDHAMANI

RESPONDENTS: COMPLAINANT & STATE
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1. **EXCISE INSPECTOR,**
NILESHWAR RANGE, HOSDURG TALUK.

2. **STATE, REP.BY PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.966/2000

ORDER ON CRL.MP. 5171/2000 IN CRL.RP. NO.966/2000

DISMISSED

04.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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K.R.UDAYABHANU, J

Crl.R.P.No.966 of 2000

Dated this the 4th day of July, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 58 of the Abkari Act and sentenced to undergo R.I. for a period of three months to pay a fine of Rs.15,000/- and in default, to undergo R.I. for three months .

2. The prosecution case is that on 24.2.1996, at about 3.30 p.m., the accused was found in possession of three litres of illicit arrack in a plastic can.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 and 3 and Exts. P1 to P3. PWs' 1 and 3, the detecting officers have testified with respect to the occurrence. The chemical analysis report establish the fact that the sample analysed contained 18.4% of volume of ethyl alcohol.

4. The contention raised is that the sample was produced in the court only on 8.5.1996 after two months and 15 days of detection. I find that the occurrence report has been produced before the court below on 26.2.1996. The date of the incident is

on 24.2.1996. There is nothing brought out to indicate that the sample was not kept in proper custody. In the circumstances only on account of the delay in producing the contraband before the court below, it cannot be held, any prejudice has been caused to the accused. I find no interference in the findings of the court below is called for. The same is confirmed.

5. Counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place more than 10 years ago and that the accused has been facing the criminal proceedings so far. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for one month. Revision petitioner is granted two months' time to remit the fine amount. The revision petitioner shall appear before the court below on 10.9.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl